17

Miscellaneous Provisions

17.1 Companies capable of being registered (Section 366 of the Companies Act, 2013)

Section 366 of the Companies Act, 2013 provides for Companies capable of being registered. According to this section:

(1) For the purposes of this Part (Chapter XXI, Part I - Companies Authorised to register under this Act), the word “company” includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of 7 or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company’s being wound up.

Exceptions-

(a) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section (this means that existing companies when the new Act came into existence were not required to be registered again under the new Act);

(b) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(c) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
(e) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

According to Rule 3 of the Companies (Authorised to Registered) Rules, 2014, provision of Chapter II (Incorporation of Company and Matters Incidental Thereto) relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration.

However, there shall be 7 or more members for the purposes of registration of a company under this sub-rule.

(3) In computing any majority required for the purposes of registration, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

17.2 Certificate of registration of existing companies (Section 367 of the Companies Act, 2013)

Section 367 of the Companies Act, 2013 provides for Certificate of registration of existing companies. According to this section:

On compliance with the requirements of this Chapter (Chapter XXI) with respect to registration, and on payment of such fees, if any, as are payable under section 403 (Fee for filing etc.) the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

17.3 Vesting of property on registration (Section 368 of the Companies Act, 2013)

This section provides for Vesting of property on registration. According to this section:

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.
17.4 Saving of existing liabilities (Section 369 of the Companies Act, 2013)

According to section 369 of the Companies Act, 2013 the registration of a company in pursuance of this Part (Chapter XXI, Part I - Companies Authorised to register under this Act) shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

17.5 Continuation of pending legal proceedings (Section 370 of the Companies Act, 2013, except the Proviso)

Section 370 of the Companies Act, 2013 partially came into force. It provides for Continuation of pending legal proceedings. According to this section:

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part (Chapter XXI, Part I - Companies Authorised to register under this Act), may be continued in the same manner as if the registration had not taken place.

17.6 Effect of registration under this Part (Section 371 of the Companies Act, 2013)

This section provides for effect of registration under this Part. According to this section:

(i) When a company is registered in pursuance of this Part (Chapter XXI, Part I - Companies Authorised to register under this Act), the under mentioned law shall apply.

(ii) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(iii) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) Table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

(c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is

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1 Proviso to section 370 of the Companies Act, 2013 is yet to be notified.
liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(iv) The provisions of this Act shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, with respect to—

(a) the registration of an unlimited company as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up,

(v) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(vi) None of the provisions of this Act (apart from those of section 242- Powers of Tribunal) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company. This means that a company cannot in any manner whatsoever, dilute the applicability of any provisions of this Act (Except those under section 242) by altering either its Memorandum of Association or Articles of Association or any instrument which constitutes or regulates the company.

(vii) Here, the expression “instrument” (used above) includes deed of settlement, deed of partnership, or limited liability partnership

17.7 Obligation of Companies registering under this Part (Section 374 of the Companies Act, 2013)

Section 374 of the Companies Act, 2013 deals with an obligation of companies registering under this Part. According to this section:

Every company which is seeking registration under this Part (Chapter XXI, Part I- Companies Authorised to register under this Act) shall,—
(i) ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company’s registration under this Part;

(ii) publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed under the Rule 4 of the Companies (Authorised to Registered) Rules, 2014 giving notice about registration under this Part, seeking objections and address them suitably;

(iii) file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be;

(iv) comply with such other conditions as may be prescribed under the Rule 5 of the Companies (Authorised to Registered) Rules, 2014.

17.8 Annual reports on Government companies (Section 394 of the Companies Act, 2013)

As per section 2(45) of the Companies Act, 2013, “Government Company” means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Section 394 of the Companies Act, 2013 provides for Annual reports on Government companies.

It provides for Annual reports on Government companies in the cases where the central government and the state Government is a member of the Government Company. According to this section:

(i) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

(a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(ii) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.
17.9 Annual reports where one or more State Governments are members of companies (Section 395 of the Companies Act, 2013)

Section 395 of the Companies Act, 2013 seeks to provide that one or more state governments who is a member of a company where no Central government is a member shall prepare annual reports on the working and affairs of the company. According to this section:

(i) **Where the Central Government is not a member of a Government company**, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(a) Prepared within the time specified in sub-section (1) of section 394; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(ii) **Application of the provisions to the Government Company in liquidation**: The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

17.10 Registration offices (Section 396 of the Companies Act, 2013)

Section 396 of the Companies Act, 2013 provides for Registration offices. According to this section:

(i) ** Establishment of offices**: For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.

Rule 4 of the *Companies (Registration Offices and Fees) Rules, 2014* shall apply in relation to Registration offices:

(a) The Central Government shall establish such number of offices at such places as it thinks fit, specifying their jurisdiction for the purpose of exercising such powers and discharge of such functions as are conferred on the Central Government by or under this Act or under the rules made there under and for the purposes of registration of companies under the Act.

(b) The office of the Registrar shall observe such normal working hours as may be approved by the Central Government and shall be open for the transaction of business with the public on all days except Saturday, Sunday and public holidays during working hours between 10.30 a.m. and 3.30 p.m.

(c) The offices other than the office of the Registrar shall observe such normal working hours as may be approved by the Central Government.
(ii) (a) **Appointment of officers:** The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act.

(b) **Powers and duties of officers:** The powers and duties that may be exercisable by such officers shall be such as may be prescribed.

According to Rule 5 of *the Companies (Registration Offices and Fees) Rules, 2014*, the following powers and duties have been prescribed:

1. The Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or the rules made there under or delegated to them by the Central Government, wherever the power or duty has been conferred upon the Central Government by the Act or the rules made there under.

2. Whenever according to the Act, any function or duty is to be discharged by the Registrar, it shall, until the Central Government otherwise directs, be done by the Registrar, or in his absence, by such person as the Central Government may for the time being authorize.

   However, in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such function or duty shall be discharged by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

(iii) **Terms & conditions of Salaries payable to officers:** The terms and conditions of service, including the salaries payable to persons appointed, shall be such as may be prescribed.

(iv) **Seal for authentication:** The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

According to Rule 6 of *the Companies (Registration Offices and Fees) Rules, 2014*, the Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, ______ (Place and State)".

**17.11 Admissibility of certain documents as evidence (Section 397 of the Companies Act, 2013)**

Section 397 of the Companies Act, 2013 provides for Admissibility of certain documents as evidence. According to this section:

Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and
shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

17.12 Provisions relating to filing of applications, documents, inspection, etc., in electronic form (Section 398 of the Companies Act, 2013)

Section 398 of the Companies Act, 2013 provides for Provisions relating to filing of applications, documents, inspection, etc., in electronic form. According to this section:

(i) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

(a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(b) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

For details, refer the Companies (Registration Offices and Fees) Rules, 2014, Rule 8: Authentication of documents.

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

According to the Companies (Registration Offices and Fees) Rules, 2014, the fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made thereunder shall be paid by means of credit card; or internet banking; or remittance at the counter of the authorised banks or any other mode as approved by the Central Government.

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue
17.9 Corporate and Allied Laws

such certificate, record the notice, receive such communication as may be required to be
registered or issued or recorded or received, as the case may be, under this Act or the
rules made thereunder or perform duties or discharge functions or exercise powers under
this Act or the rules made thereunder or do any act which is by this Act directed to be
performed or discharged or exercised or done by the Registrar in the electronic form in
such manner as may be prescribed.

Explanation— It is clarified that the rules made under this section shall not relate to imposition
of fines or other pecuniary penalties or demand or payment of fees or contravention of any of
the provisions of this Act or punishment therefor.

(ii) The Central Government may, by notification, frame a scheme to carry out the provisions
of section 398(1) through the electronic form.

For details, refer the Companies (Registration Offices and Fees) Rules, 2014.

17.13 Inspection, production and evidence of documents kept by
Registrar (Section 399 of the Companies Act, 2013)

Section 399 of the Companies Act, 2013 provides for Inspection, production and evidence of
documents kept by Registrar. According to this section:

(i) Save as otherwise provided elsewhere in this Act, any person may—

(a) inspect by electronic means any documents kept by the Registrar in accordance with the
rules made, being documents filed or registered by him in pursuance of this Act, or
making a record of any fact required or authorised to be recorded or registered in
pursuance of this Act, on payment for each inspection of such fees as may be
prescribed;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other
document or any part of any other document to be certified by the Registrar, on payment
in advance of such fees as may be prescribed:

(ii) The rights conferred as mentioned above shall be exercisable—

(a) in relation to documents delivered to the Registrar with a prospectus in pursuance
of section 26 (Matters to be stated in the prospectus), only during the 14 days beginning
with the date of publication of the prospectus; and at other times, only with the
permission of the Central Government; and

(b) in relation to documents so delivered in pursuance of clause (b) of subsection (1)
of section 388 (Provisions as to expert’s consent and allotment), only during the 14 days
beginning with the date of the prospectus; and at other times, only with the permission of
the Central Government.

(iii) According to section 399(2) of the Companies Act, 2013, no process for compelling the
production of any document kept by the Registrar shall issue from any court or the Tribunal2

2 Reference of word Tribunal in sub-section (2) of section 399 has not been notified upto 31st October,
2015. Thus, point (iii) shall be read accordingly.
except with the leave of that court or the Tribunal\(^3\) and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(iv) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

According to Rule 14 of the Companies (Registration Offices and Fees) Rules, 2014, the inspection of the documents maintained in the electronic registry so set up in pursuance of rule 9 of the Companies (Registration Offices and Fees) and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.

**Inspection of documents**- Rule 15 of the Companies (Registration Offices and Fees) Rules, 2014, provides that any person may-

(a) inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or the Companies Act, 1956 (1 of 1956) or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of fee.

(b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of fee.

\(^4\)Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions passed in pursuance of section 179(3) as referred to in clause (g) of sub-section (3) of section 117 of the Act.

**17.14 Electronic form to be exclusive, alternative or in addition to physical form (Section 400 of the Companies Act, 2013)**

Section 400 of the Companies Act, 2013 provides for Electronic form to be exclusive, alternative or in addition to physical form. According to this section:

The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

**17.15 Provision of value added services through electronic form (Section 401 of the Companies Act, 2013)**

Section 401 of the Companies Act, 2013 provides that the Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed under Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014.

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\(^3\) Reference of word Tribunal in sub-section (2) of section 399 has not been notified upto 31\(^{st}\) October, 2015. Thus, point (iii) shall be read accordingly.

\(^4\) Inserted by the Companies (Registration Offices and Fees)Second amendment Rules , 2015 w.e.f . 29.5.15.
17.16 Application of provisions of Information Technology Act, 2000 (Section 402 of the Companies Act, 2013)

Section 402 of the Companies Act, 2013 provides that all the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398.

17.17 Fee for filing, etc. (Section 403 of the Companies Act, 2013)

According to this section any documents may be filed with the registrar with the specified fees in the following conditions:

(i) Submission within time: Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed.

(ii) Submission after the time specified in relevant provision: Any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed as per the rule 12 and 13 of the Companies (Registration Offices and Fees) Rules, 2014.

(iii) Submission after the expiration of above 270 days also: Any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in the expiration of above mentioned 270 days, on payment of fee and additional fee specified under this section.

(iv) Penalty or punishment on submission after the expiration of above 270 days also: Where a company fails or commits any default to submit, file, register or record any document, fact or information within 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

In case of Nidhis, section 403 shall apply, with the modification that the filing fees in respect of every return of allotment made under sub-section 9 of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.

17.18 Fees, etc., to be credited into public account (Section 404 of the Companies Act, 2013)

Section 404 provided that all fees, charges and other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of India.

17.19 Power of Central Government to direct companies to furnish information or statistics (Section 405 of the Companies Act, 2013)

Section 405 of the Companies Act, 2013 provides for Power of Central Government to direct companies to furnish information or statistics. According to this section:

(i) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(ii) Every above order shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit.

(iii) The date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(iv) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any above order is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(v) If any company fails to comply with an order made above or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

(vi) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

17.20 Power to modify Act in its application to Nidhis (Section 406 of the Companies Act, 2013)

Section 406 of the Companies Act, provides Power to the Central Government to modify Act in its application to Nidhis. According to this section:
(i) **Definition**: Here, “Nidhi” means a company which has been incorporated as a Nidhi with the object of:

(a) cultivating the habit of thrift and savings amongst its members,
(b) receiving deposits from, and lending to, its members only, for their mutual benefit, and
(c) which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(ii) The Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

(iii) A copy of every notification proposed to be issued under point (ii), shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

The **Nidhi Rules, 2014**, shall apply in relation to the following:

(i) **Application**: These rules shall apply to-

(a) every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956,
(b) every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-Section (1) of Section 620A of the Companies Act, 1956; and
(c) every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Act.

(ii) **Incorporation and incidental matters.**—

(a) A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of 5 lakh rupees.
(b) On and after the commencement of the Act, no Nidhi shall issue preference shares.
(c) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
(d) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.
Exception as provided under the proviso to sub-rule (e) to rule 6: Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(e) Every Company incorporated as a “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.

(iii) **General restrictions or prohibitions**

No Nidhi shall—

(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;

(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;

(c) open any current account with its members;

(d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;

Explanation.—For the purposes of this sub-rule, “control” shall have the same meaning assigned to it in section 2(27) of the Act;

(e) carry on any business other than the business of borrowing or lending in its own name: However Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(f) accept deposits from or lend to any person, other than its members;

(g) pledge any of the assets lodged by its members as security;

(h) take deposits from or lend money to any body corporate;

(i) enter into any partnership arrangement in its borrowing or lending activities;

(j) issue or cause to be issued any advertisement in any form for soliciting deposit:

However private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.

(k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

(iv) **Membership.**—

(a) A Nidhi shall not admit a body corporate or trust as a member.
(b) Except as otherwise permitted under the rules, every Nidhi shall ensure that its membership is not reduced to less than 200 members at any time.

(c) A minor shall not be admitted as a member of Nidhi:
However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

(v) Rules relating to Directors.—
(a) The Director shall be a member of Nidhi.
(b) The Director of a Nidhi shall hold office for a term up to 10 consecutive years on the Board of Nidhi.
(c) The Director shall be eligible for re-appointment only after the expiration of 2 years of ceasing to be a Director.
(d) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.
(e) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

(vi) Dividend.—A Nidhi shall not declare dividend exceeding 25% or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:—
(a) an equal amount is transferred to General Reserve;
(b) there has been no default in repayment of matured deposits and interest; and
(c) it has complied with all the rules as applicable to Nidhis.

(vii) Auditor.—
(a) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years.
(b) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than 2 terms of 5 consecutive years:

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of 2 years from the completion of his or its term:

Explanation: For the purposes of this proviso:

(1) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of 5 consecutive years or 10 consecutive years, as the case may be;

(2) appointment includes re-appointment.
(viii) Auditor's certificate.—
The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

(ix) Penalty for non-compliance.—
If a company to which the Nidhi Rules, 2014 applies contravenes any of the provisions of the prescribed rules, the company and every officer of the company who is in default shall be punishable with fine which may extend to 5,000 rupees, and where the contravention is a continuing one, with a further fine which may extend to 500 rupees for every day after the first during which the contravention continues.

17.21 Punishment for fraud (Section 447 of the Companies Act, 2013)
Section 447 of the Companies Act, 2013 provides for Punishment for fraud. According to this section:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

Explanation.—For the purposes of this section—

(a) “fraud” in relation to affairs of a company or any other person, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(b) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(c) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

17.22 Penalty for false statements (Section 448 of the Companies Act, 2013)
According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or
(b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

17.23 Penalty for false evidence (Section 449 of the Companies Act, 2013)

According to section 449 of the Companies Act, 2013, save as otherwise provided in this Act, if any person intentionally gives false evidence—

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and with fine which may extend to 10 lakh rupees.

17.24 Punishment where no specific penalty or punishment is provided (Section 450 of the Companies Act, 2013)

(i) Applicability of section 450: The penalty under this section applies only in those cases where penalty or punishment is not provided elsewhere in this Act.

(ii) Penalty under this section: The company and every officer of the company who is in default or such other person:

(a) shall be punishable with fine which may extend to 10,000 rupees, and

(b) Where the contravention is continuing one, with a further fine which may extend to 1,000 rupees for every day after the first during which the contravention continues.

(iii) List of contraventions: If a company or any officer of a company or any other person contravenes:

(a) any of the provisions of this Act; or

(b) the rules made thereunder; or

(c) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted.

17.25 Punishment in case of repeated default (Section 451 of the Companies Act, 2013)

As per the section, if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of 3 years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.
17.26 Penalty for wrongful withholding of property (Section 452 of the Companies Act, 2013)

Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to this section:

(i) If any officer or employee of a company—

(a) wrongfully obtains possession of any property, including cash of the company; or
(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

(ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

17.27 Punishment for improper use of "Limited" or "Private Limited" (Section 453 of the Companies Act, 2013)

Section 453 of the Companies Act, 2013 provides for Punishment for improper use of "Limited" or "Private Limited". According to this section:

If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than 500 rupees but may extend to 2,000 rupees for every day for which that name or title has been used.

17.28 Adjudication of penalties (Section 454 of the Companies Act, 2013)

Section 454 of the Companies Act, 2013 provides for Adjudication of penalties. According to this section:

(i) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed [Section 454 (1)].

(ii) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub section (1) referred above [Section 454 (2)].
(iii) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act [Section 454 (3)].

(iv) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default [Section 454 (4)]

(v) Any person aggrieved by an order made by the adjudicating officer under sub section (3) above may prefer an appeal to the Regional Director having jurisdiction in the matter [Section 454 (5)]

(vi) Every appeal under sub section (5) above, made by any person aggrieved by an order made by the adjudicating officer, shall be filed within 60 days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed [Section 454 (6)]

(vii) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against [Section 454 (7)].

(viii) Section 454 (8):

(a) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of 90 days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

(b) Where an officer of a company who is in default does not pay the penalty within a period of 90 days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, or with both.

For further details, refer the Companies (Adjudication of Penalties) Rules, 2014.

17.29 Dormant company (Section 455 of the Companies Act, 2013)

A new section 455 of the Companies Act, 2013 provides for Dormant Company. According to this section:

(i) **Status as a dormant company**: Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

(a) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
(b) “significant accounting transaction” means any transaction other than—

(1) payment of fees by a company to the Registrar;

(2) payments made by it to fulfill the requirements of this Act or any other law;

(3) allotment of shares to fulfill the requirements of this Act; and

(4) payments for maintenance of its office and records.

According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

A company shall be eligible to apply under this rule only, if—

(a) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(b) no prosecution has been initiated and pending against the company under any law;

(c) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

(d) the company is not having any outstanding loan, whether secured or unsecured:

   However if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;

(e) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;

(f) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;

(g) the company has not defaulted in the payment of workmen’s dues;

(h) the securities of the company are not listed on any stock exchange within or outside India.

(ii) Certificate of status of dormant company: The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

According to the Rule 4 of the Companies (Miscellaneous) Rules, 2014, the Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.

(iii) Register of dormant company: The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
According to the Rule 5 of the Companies (Miscellaneous) Rules, 2014, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

(iv) Consequences of non filing of annual returns or financial statements: In case of a company which has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

According to the Rule 7 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall file a “Return of Dormant Company” annually, inter alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of 30 days from the end of each financial year.

The company shall also continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

(v) Directors of dormant company: A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

Rotation of auditors: According to Rule 6 the Companies (Miscellaneous) Rules, 2014, the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

Application for seeking status of an active company: According to the Rule 8 of the Companies (Miscellaneous) Rules, 2014,

(a) An application for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed:

However, the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

(b) The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

(c) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant
company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.

(d) Where the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

(vi) **Striking off the name by the Registrar:** The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

### 17.30 Protection of action taken in good faith (Section 456 of the Companies Act, 2013)

According to the section no suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

### 17.31 Non-disclosure of information in certain cases (Section 457 of the Companies Act, 2013)

Section 457 says that—

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

(a) has led the Central Government to order an investigation under section 210; or

(b) is or has been material or relevant in connection with such investigation.

### 17.32 Delegation by Central Government of its powers and functions (Section 458 of the Companies Act, 2013)

Section 458 of the Companies Act, 2013 provides for delegation of its powers and functions by Central Government. According to this section:

(i) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.
However, the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to SEBI for listed companies or the companies which intend to get their securities listed.

In such case, any officer authorised by the SEBI shall have the power to file a complaint in the court of competent jurisdiction.

(ii) A copy of every notification issued under point (i) shall, as soon as may be after it is issued, be laid before each House of Parliament.

17.33 Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications (Section 459 of the Companies Act, 2013)

Section 459 of the Companies Act, 2013 provides for Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications. According to this section:

(i) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—

(a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(ii) Every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by the prescribed fees which have been specified in the Rule 9 of the Companies (Registration Offices and Fees) Rules, 2014.

(iii) Different fees may be prescribed in Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 for applications in respect of different matters or in case of applications by different classes of companies.
17.34 Condonation of delays in certain cases (Section 460 of the Companies Act, 2013)

Notwithstanding anything contained in this Act,—

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

17.35 Annual report by Central Government (Section 461 of the Companies Act, 2013)

Section 461 says that the Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

17.36 Power to exempt class or classes of companies from provisions of this Act (Section 462 of the Companies Act, 2013)

Section 462 of the Companies Act, 2013 provides for Power to exempt class or classes of companies from provisions of this Act. According to this section:

(i) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(ii) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(iii) In reckoning any such period of thirty days as is referred to in point (ii), no account shall be taken of any period during which the House referred to as above, is prorogued or adjourned for more than four consecutive days.

(iv) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”

Subsection (2) of this section of the Companies Act, 2013 was substituted by the Companies (Amendment) Act, 2015 w.e.f. 29.5.15.
17.37 Power of court to grant relief in certain cases (Section 463 of the Companies Act, 2013)

Section 463 of the Companies Act, 2013 provides for Power of court to grant relief in certain cases. According to this section:

(i) If it appears to the court hearing the case that an officer of a company is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust but he has acted honestly and reasonably, he ought fairly to be excused having regard to all the circumstances of the case, including those connected with his appointment, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

(ii) In a criminal proceeding, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(iii) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought.

(iv) No court shall grant any relief to any officer unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

17.38 Prohibition of association or partnership of persons exceeding certain number (Section 464 of the Companies Act, 2013)

Section 464 of the Companies Act, 2013 provides for Prohibition of association or partnership of persons exceeding certain number. According to this section:

(i) Maximum number of persons: According to section 464(1) of the Companies Act, 2013, no association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

However, the number of persons which may be prescribed shall not exceed one hundred.

Rule 10 of the Companies (Miscellaneous) Rules, 2014, provides that no association or partnership shall be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Thus, the above provision can be read as under:
No association or partnership consisting of more than 50 persons (as provided under the Rules) shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

Further, the Act has put a cap of maximum 100 persons. Thus, the number of persons as provided in the Rule 10 cannot exceed the maximum cap of 100 persons.

(ii) **Exceptions:** The above provision is not applicable to-

(a) a Hindu undivided family carrying on any business; or

(b) an association or partnership, if it is formed by professionals who are governed by special Acts.

(iii) **Penalty:** Every member of an association or partnership carrying on business in contravention of section 464(1) shall be punishable with fine which may extend to 1 lakh rupees and shall also be personally liable for all liabilities incurred in such business.

### 17.39 Power of Central Government to amend Schedules (Section 467 of the Companies Act, 2013)

Section 467 of the Companies Act, 2013 provides for Power of Central Government to amend Schedules. According to this section:

(i) The Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

(ii) Any alteration notified as above shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(iii) No such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

(iv) Every alteration made by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

### 17.40 Power of Central Government to make rules relating to winding up (Section 468 of the Companies Act, 2013)

Section 468 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Central Government to make rules relating to winding up. According to this section:
17.27 Corporate and Allied Laws

(i) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

(ii) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
(b) for the voluntary winding up of companies, whether by members or by creditors;
(c) for the holding of meetings of creditors and members in connection with proceedings under section 230;
(d) for giving effect to the provisions of this Act as to the reduction of the capital;
(e) generally for all applications to be made to the Tribunal under the provisions of this Act;
(f) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(g) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
(h) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(i) the making of calls; and
(j) the fixing of a time within which debts and claims shall be proved.

(iii) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

17.41 Power of Central Government to make rules (Section 469 of the Companies Act, 2013)

Section 469 of the Companies Act, 2013 provides for Power of Central Government to make rules. According to this section:

(i) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(ii) The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(iii) Any rule made as above may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.
(iv) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

17.42 Power to remove difficulties (Section 470 of the Companies Act, 2013)

According to this section:

(i) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

(ii) No such order shall be made after the expiry of a period of 5 years from the date of commencement of section 1 of this Act.

(iii) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

### RELEVANT SECTIONS OF THE COMPANIES ACT, 1956 APPLICABLE FOR EXAMINATIONS

1. **Definition of “joint stock company” (Section 566):** For the purposes of Part IX of the Act, a joint stock company means a company having:
   (i) a permanent paid-up or nominal share capital of a fixed amount,
   (ii) divided into shares also of fixed amount or held and transferable as stock, or
   (iii) divided and held partly in shares and partly in stocks and
   (iv) the members are the holders of these shares or stocks.
   When such a company is registered under the Companies Act, 1956, then it shall be deemed to be a company limited by shares.

2. **Requirements for registration of joint-stock companies (Section 567):** Prior to the registration of a joint-stock company (under Part IX), the following documents have to be delivered to the Registrar:
   (i) a list of names, addresses and occupations of all persons who on a day named in the list (not being more than 6 clear days before the day of registration) were members of
the company. The list also embodies the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its member.

(ii) a copy of any Act of Parliament or other Indian Law, Act of Parliament of the U.K., Royal Charter, Letters Patent, Deed of Settlement, Deed of Partnership or other instrument constituting or regulating the company; and

(iii) if the company is intended to be registered as limited company, a statement specifying such particulars as:

(a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists,

(b) the number of shares taken and the amount paid on each share,

(c) the name of the company with the addition of the word “Limited” or “Private Limited” as the last word or words; and

(d) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

The application to the Registrar of Companies should be in Form 37. The list of numbers should be in Form No. 39. Particulars of capital should be in Form No. 40.

3. **Requirements for registration of companies not being joint-stock companies (Section 568):** This section lays down the procedure for registration of companies other than joint-stock companies. Prior to registration, the following documents have to be delivered to the Registrar, namely (i) a list showing the names, addresses and occupation of the directors, and the manager, if any; (ii) a copy of any Act of Parliament or other Indian Laws, Acts of the U.K. Parliament, Letters Patent, Deed of Settlement, Deed of Partnership or other instrument constituting or regulating the company; and (iii) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

The application for the registration of companies should be in Form No. 38 and the particulars of directors or managers or secretaries etc. in Form No. 42.

4. **Authentication of statements of existing companies (Section 569):** The documents to be filed with the Registrar of Companies (mentioned above) have got to verify by the declaration of at least 2 directors or other principal officers of the company.

5. **Power of the Registrar to require evidence as to nature of the company (Section 570):** The Registrar has the discretion to call for such evidence as he thinks necessary for the purpose of satisfying himself, whether any company proposing to be registered is or is not a joint-stock company within the meaning of Section 566.

The Registrar has the discretion to refuse registration of a company, but he must not exercise this discretion arbitrarily. Against refusal by the Registrar, an application under Article 226 of the Constitution would lie in the High Court.

6. **Change of name for purposes of registration (Section 572):** It is open to the Registrar of Companies to refuse registration of a company if its name is undesirable. In such a situation, the company may, with the approval of the Central Government signified in
writing, change its name with effect from the date of its registration (under Part IX). However, for changing the name as aforesaid, a resolution has to be passed at a meeting of the members comprising the same. The passage of such resolution must be by a majority as specified in Section 565.

7. **Addition of “Limited” or “Private Limited” to name:** Under Section 573, on registration (under Part IX), every company must have the word “Limited” or “Private Limited”, in its name. However, such a company may obtain a license under Section 25 (Section 8 of the Companies Act, 2013) for the omission of the word “Limited” or “Private Limited”.

8. **Power to substitute Memorandum and Articles for Deed of Settlement (Section 579):** A company registered in pursuance of Part IX may by a special resolution, alter the form of its constitution, memorandum or articles for a deed of settlement (i.e., any Deed of Partnership, Act of U.K., Parliament, Royal Charter and Letters Patent or other instrument constituting or regulating the company. But the term does not include any Indian Act).

   The provisions of Sections 17, 18 and 19 regarding alteration of the objects, shall so far as applicable apply to any alteration under this Section with the following modifications:

   (i) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles; and

   (ii) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner, as if it were a company registered under this Act with that memorandum and those articles, and company’s deed of settlement shall cease to apply to the company.

9. **Power of Court to stay or restrain proceedings (Section 580):** After the presentation of a petition for winding-up but before the order of winding-up is made, the Court may, on an application made under Section 442, stay any suit or legal proceedings already pending and may restrain any person from filing a suit or taking legal proceedings against the company. Under Section 580, the same jurisdiction of the Court may be exercised.

   The company, a contributory and a creditor may apply for stay of any suit or legal proceedings against the company. A suit or legal proceedings pending against a contributory, who might have been previously personally liable for company’s debts, can be stayed only on the application of the creditor Section 586 [discussion in Chapter 10] makes a similar provision in respect of unregistered companies.

**N.B:**

(i) Section 422 applies to companies within the meaning of the Companies Act, 1956.

(ii) Section 580 applies to companies not incorporated under this Act but are allowed to be registered under the Act.

(iii) Section 586 can be invoked when an Indian Court is winding-up an “unregistered company” including a foreign company.
10. **Suits stayed on winding-up order (Section 581):** The provisions of this Section are similar to those of Section 446. No person can file or proceed with any suit or legal proceeding against the company or any contributory of the company except by leave of the court. This provision applies when a winding up order has been made or a provisional liquidator has been appointed and the company is registered under Part IX of the Act.

11. **Composition of certain offences:** Section 621A inserted by the Companies (Amendment) Act, 1988 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine may, either before or after the institution of any prosecution be compounded by (i) the Company Law Board (ii) the Regional Director, where the fine imposed for such offence does not exceed ₹ 5,000 on payment or credit of such sum, as may be specified.

12. **Jurisdiction to try offences:** An offence against the Act shall be tried at least by the Court of Presidency Magistrate or a magistrate of the First Class (Section 622).

   In as much as a company is judicial person, it can be prosecuted like any other individual also it can be convicted and fined, if it is found guilty. Suppose an offence is punishable under the Act only by fine and nothing else. In such a situation, if the offence were committed within Presidency town, it would be punishable upon summary conviction by any Presidency Magistrate of that town (Section 623).

13. **Compensation in the case of frivolous and vexatious prosecution:** For the institution of frivolous and vexatious prosecution against a company or an officer thereof by a shareholder, he may be ordered by the trying Magistrate to pay to the aggrieved party by way of compensation an amount not exceeding ₹ 1,000. In case of default in payment of the said amount the shareholder may be ordered to undergo a simple imprisonment for a maximum period of two months. The shareholder, however, shall have the right to appeal against such order (Section 625).

14. **Contracts by agents where a company is an undisclosed principal:** Section 416 prescribes a special rule with regard to contracts entered into on behalf of a public company (or a private company which is a subsidiary of a public company) by the manager or other agent, in which the company is an undisclosed principal. It provides that any such person, when entering into such a contract, must draw up a memorandum of the terms of the contract, at the time of contract is entered into, specifying the names of the persons with whom it has been done. The memorandum must be placed in the record of the company and the copies thereof must be sent to all the directors. Subsequently, the memorandum should be placed before the Board at its next following meeting. In case of default, the contract, at the option of the company, shall be voidable as against the company, and the person who had entered into the contract or every officer of the company in default, as the case may be, would be liable to penalty, which may extend to ₹ 2000/-. However, the Central Government may grant relief under Section 463 of the Companies Act, 2013, to an officer in default, if it appears to it that the person has acted honestly and reasonably and that having regard to all the
circumstances of the case, he ought fairly to be excused. The relief may be granted either wholly or partially.

15. Employees’ Security and Provident Funds: Sections 417-420 of the Companies Act, 1956 deal with the Employees’ Securities and Provident Funds. They provide as follows:

(i) Any money or security deposit made by an employee of a company under the terms of his contract of services, must be kept or deposited by the company within 15 days from the date of deposit in a Post Office Savings Bank Account or in a special account to be opened with the State Bank of India or a Scheduled Bank or, where the company itself is a Scheduled Bank, in a special account to be opened by it at or with the State Bank of India or any other Scheduled Bank.

The Company must not utilise any portion of such moneys or securities except for the purposes agreed to, in the contracts of service (Section 417).

(ii) Where a provident fund has been constituted by a company for its employees or any class of its employees, all money contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund, within 15 days from the date of contribution, receipt or accrual should be deposited in a Post Office Savings bank Account or in a special account in a Scheduled Bank or in the State Bank of India, or where the company itself is a Scheduled Bank in, a special account to be opened either in itself or in the State Bank of India, or in any other Scheduled Bank or suitably invested in securities mentioned or referred to in Sections 20(a) to (e) to the Indian Trusts Act, 1882 [Section 418(1)].

(iii) In no case will an employee be entitled to receive an interest in respect of the amount standing to his credit at a rate in excess of that yielded by the investment made in accordance with the requirements aforementioned [Section 418(2)].

(iv) An employee may obtain advances from the fund or withdraw money standing to his credit in the fund, if the fund is a recognised provident fund within the meaning of Section 58A(a) of the Income Tax Act, 1922 or if the rules of the fund contain provisions corresponding to the rules 4 to 9 of the Income-tax (Provident Funds Relief) Rules [Section 418(3)].

Tutorial Note: Section 2(38) of the Income Tax Act, 1961 defines a recognised provident fund and the relevant rules thereto are provided in Part XII (Rules 67 to 81) of the Income-tax Rules, 1962.

(v) If a trust has been created by the company with regard to any provident fund, the company must collect and pay the employee’s contributions together with its own contributions to the trustees within 16 days from the date of their collection. Thereafter the trustees will be obliged to comply with the aforesaid requirements as regards their investment [Section 418(4)].

An employee, on making request to the company or to the trustees, as the case may be, may look into the receipts issued by banks for provident fund money and securities deposited with them as well as the bonds or securities in respect of investments in trust securities (Section 419). But such a right can be exercised only by an existing employee.
and not by an ex-employee or past employee or a person whose service has been terminated. [The State vs. Girdhari Bajaj, 63 Bom. L.R. 743].

Any contravention of the provisions of Sections 417, 418 & 419 by an officer of the company or by a trustee of the provident fund will render him punishable with imprisonment for a period extending up to six months or with fine extending to ₹ 10,000 (Section 420).

The status of Trust continues even though the balance in the Fund has been misapplied. Even if the balance standing to the credit of the provident fund, or the amounts deposited by the employees, is wrongfully invested and profits accrue to the company out of these wrongful investments the character of trust attaching to the fund is not altered. Neither would such a use have the effect of converting it into a loan. It will continue to remain a fund irrespective of the fact that the employees knew that the company had wrongfully employed the fund in its own business. It would not preclude the employees from claiming the funds from the company when it is in liquidation, as preferential creditors. This is because the company shall continue to be the trustee in respect of these funds and will not become mere debtor. [Alliance Bank of Simla Ltd. (1924) 21 C.W.N. 721, Re. Bengal Zamindari and Banking Co. (1937) 2 Cal. 305].

16. Receivers and Managers: A receiver of the property of a company should furnish the Registrar of Companies once in every half year while he remains in possession and also on his ceasing to act as receiver an abstract of receipts and payments during the period to which the abstract relates in Form No. 36 of the Companies (Central Government's) Rules and Forms, 1956. Moreover, on the appointment of the Receiver, an entry to this effect should appear in every invoice, order for goods or business letter issued by or on behalf of the company or the receiver. In the event of these provisions being contravened, the company and every officer thereof, who is in default, shall be liable to pay a fine of ₹ 2000 (Sections 421-423).

17. Security for costs by Limited Company: When a limited company is the plaintiff of petitioner in a suit or in any other legal proceedings, if the Court having the jurisdiction in the matter has reason to believe that the company will not be able to pay the cost of the defendant, if he is successful in his defence, it may require the company to furnish sufficient security for costs, and may stay all proceedings until the security is provided (Section 632).

18. Enforcement of duty of a company to make returns etc. to Registrar: Where a company is required under the Act to file or register any return, account or other document or notice, and the company defaults in doing so for a period of 14 days, then any member or creditor of the company or the Registrar may make an application to the Company Law Board for such compliance. On such an application, the Company Law Board may direct the company and any officer thereof to make good the default within such time as may be specified in the order. But this provision does not affect the levying of any penalty on the company or its officers in respect of any such default (Section 614).

19. Power of the Court trying offences under the Act to direct the filing of documents with Registrar: Any Court trying an offence for a default in compliance with any
provisions of the Act, which requires a company or its officers to file or register with or
deliver or send to the Registrar any return, account or other document, may, at the time
of sentencing, acquitting or discharging the accused, as the case may be, compel such
compliances by order on payment of the fee including the additional fee required to be
paid under Section 611 within the time specified in the order. If such an order is not
complied with, the defaulting officer or employee of the company shall be liable to be
punished with imprisonment for a maximum period of 6 months or with fine, or with both
(Section 614A). Further, if a director fails to comply with the order of the Court under the
Companies Act to submit a return to the Registrar within the stipulated time, he shall be
guilty of contempt of Court and the High Court has power to punish the direct or for
contempt of the Court [State of U.P. vs. Tikka Ram Uniyal (1964) 34 Comp. Cas. 5].

20. **Enforcement of orders:** Any order made by a Court under the Companies Act is
enforceable in the same manner as a decree made by the Court in a suit pending with it
(Section 634).

21. **Enforcement of orders of Company Law Board:** Section 634A which has been added
by the Companies (Amendment) Act, 1977 and as amended by the Companies
(Amendment) Act, 1988 provides that any order made by the Company Law Board may
be enforced by the Board in the same manner as if it were a decree by a Court in a suit
pending therein and it shall be lawful for that Board to send in the case of its inability to
execute such order, to the Court within the local limits of whose jurisdiction: (a) in the
case of an order against a company the registered office of the company is situated; or
(b) in the case of an order against any other person, the person concerned voluntarily
resides or carries on business or personally works for gain.

22. **Enforcement of orders of one Court by other Court:** Where the order of the Company
Court, which is deemed to be decree, is to be executed outside its jurisdiction, a certified
copy of the order has to be produced before the other Court [Section 635(1)]. The
production of such certified copy shall be sufficient evidence of the order. Upon the
production of such certified copy of the Court shall take the requisite steps for enforcing
the order, in the same manner as if it had been made by itself [Sections 635(2) & (3)].
Where, any order made by the Company Law Board required to be enforced by a Court a
certified copy of the order shall be produced to the proper officer of the Court required to
enforce the order and the provisions of sub-sections (2) & (3) shall, as far as may be,
apply to every such order in the same manner and to the same extent as they apply to an
order made by a Court [Section 635(4) added by the Amendment Act, 1977 as amended
by the Companies (Amendment) Act, 1988].